

REQUEST FOR PROPOSALS TO MONITOR THE FEDERAL CONSENT DECREE
APPROVED IN O'DONNELL v. HARRIS COUNTY

DEADLINE: January 31, 2020

TERM: A minimum of seven years from the date of appointment

I. Project Overview

Harris County, Texas (“County”); the Harris County Sheriff’s Office (“Sheriff’s Office”); the Harris County Criminal Courts at Law (“County Judges”); and the Plaintiff Class (or “Plaintiffs”) (collectively, “the Parties”) are seeking applications for an independent Court Monitor to monitor and report on the implementation of a Consent Decree, approved on November 21, 2019, that resolves Plaintiffs’ constitutional claims challenging the misdemeanor bail policies and practices of the County, the Sheriff’s Office, and the County Judges. *See* Exhibit 1 (Consent Decree). Pursuant to the Consent Decree, “[t]he Monitor must operate for a period of seven (7) years beginning on the date that the Monitor is appointed by the Court. The period may be extended for good cause.” Exhibit 1, Section 110.

The Parties worked collaboratively from January through July of 2019 to negotiate a Consent Decree designed to maximize pretrial liberty, court appearance, and public safety in Harris County’s misdemeanor pretrial system. As stated in the Consent Decree, the purpose of the agreement is to create and enforce constitutional and transparent pretrial practices and systems that protect the due process rights and equal protection rights of misdemeanor arrestees. The reforms are intended to safeguard arrestees’ equal protection and due process rights, including the fundamental interest in pretrial liberty and the right against wealth-based detention; to promote court appearance and public safety; to require investments necessary for new systems to function efficiently in a large jurisdiction; to promote transparency, rigorous analysis, and accountability throughout the pretrial process so that constitutional practices will endure; and to institutionalize mechanisms, including training, rigorous data collection and production, and ongoing public communication, that will protect against a reversion to the pre-litigation system of mass, non-individualized pretrial detention of misdemeanor arrestees without lawful justification.¹

Specifically, the Consent Decree requires implementation and monitoring of the following:

- New post-arrest policies that require the prompt release of most misdemeanor arrestees prior to an individualized hearing, and that will result in the release of most other misdemeanor arrestees following a rigorous, constitutionally adequate, individualized hearing with counsel (Section 30);
- The County must provide funding and staffing for public defenders at all bail hearings, and must study the need for, and then provide access to, social workers, investigators, and other support staff at those hearings (Sections 38–43);
- The County must update its written court notification form, implement a text-message and phone-call system to remind arrestees of court dates, hire a researcher to study the causes of nonappearance in Harris County, and invest a minimum of \$850,000 annually in systems and supports to mitigate those causes (Sections 46–53);
- The Judges must implement uniform policies relating to court appearance and the issuance of arrest warrants for nonappearance (Sections 57–71);

¹ *O'Donnell*, 251 F. Supp. 3d at 1167, 1168.

- The County must provide training to the Judges, Hearing Officers, and all other officials involved in implementing the new bail policies (Sections 73–79);
- Defendants must preserve, collect, and produce raw data relating to the pretrial system, and must generate periodic reports for the general public and the Court about its functioning (Sections 83–90);
- Defendants must participate in twice-yearly public meetings to report on progress toward implementation of the Consent Decree (Sections 91–92).

The Consent Decree further requires an Independent Monitor to oversee and evaluate implementation of these new policies. (Sections 94–133)

II. The System Plaintiffs Challenged

Harris County, Texas, is the third-largest county in the United States with a population of approximately 4.7 million. In 2018, there were a total of 79,851 new arrests in Harris County, including 46,175 people whose most serious offense was a misdemeanor. The average daily misdemeanor jail population is between 200 and 400 (depending on whether misdemeanor arrestees who have concurrent felony charges, holds from other jurisdictions, or other reasons for detention are included). African-Americans and Latinos are overrepresented in the arrest population, overall jail population, and pretrial jail population. Prior to this lawsuit, 40% of all misdemeanor arrestees were still in jail the day their cases resolved because they had been unable to afford the few hundred dollars required for their release.

There are 16 County Criminal Courts at Law (“CCCL”) in Harris County. These courts adjudicate all misdemeanor offenses charged in the County. For decades prior to this lawsuit, there was a bail schedule in place, promulgated by the CCCL Judges, that was used to determine conditions of release upon arrest. Arrestees with access to money could be released immediately after arrest, without seeing a judge; those who could not afford to pay were kept in jail to appear before a Criminal Law Hearing Officer (Hearing Officers act as agents of the elected misdemeanor and felony judges). Data produced during the litigation showed that the Hearing Officers confirmed the scheduled amount in almost 90% of cases. The evidence also showed that Hearing Officers required secured money bail knowing and intending that it would detain misdemeanor arrestees who could not afford the amounts. Arrestees did not have counsel and were prohibited from speaking at the hearing. The Hearing Officers did not make any written findings about the need for pretrial detention of misdemeanor arrestees.

After the initial bail hearing before a Hearing Officer, arrestees who could not afford to pay were kept in jail until their first court appearance before a CCCL Judge. About 13% waited 96 hours or more from arrest to see a CCCL Judge. The vast majority of arrestees who were still detained at that hearing—84%—pled guilty, and of those, 67% were released within one day of conviction, and 83% within five days, leading the federal court to characterize Harris County as a “sentence first, conviction after” system that pressured misdemeanor arrestees to plead guilty as the fastest way out of jail. Largely because of this coercive system, Harris County has led the nation in exonerations for the past few years.

Misdemeanor arrestees who were detained at disposition faced significant negative outcomes in their cases and lives. They were more likely to plead guilty, more likely to be sentenced to jail, and, when sentenced to jail, received longer jail sentences than similarly situated people who were released at disposition. People detained at disposition also lost their jobs, missed rent payments, had their cars impounded or repossessed, and were separated from their children, sometimes losing custody. Rigorous research on the Harris County system showed that spending

even a few days in jail due to inability to pay money bail caused people to miss court and to commit new crimes—largely due to the destabilizing effects of pretrial jailing. All of these effects were occurring without any decision-maker in the County ever studying whether secured money bail produced any benefits in court appearance or community safety that were not achievable through strategies that avoided the mass pretrial detention of indigent misdemeanor arrestees.

While the Court’s first preliminary injunction was in effect between June 2017 and August 2018, more than 90% of misdemeanor cases were released within 24 hours of arrest. The data showed that people released pursuant to the injunction resolved their cases in roughly the same amount of time as people released on cash or surety bonds—in other words, they did not flee prosecution. Nevertheless, the Judges and County manipulated the system and data to create a public narrative that the Court’s injunction was wreaking havoc, impeding the system’s ability to resolve cases efficiently, and causing a public safety crisis. None of this was true.

In November 2018, a new slate of judges was elected, along with a new Commissioner for Precinct 2 and a new County Judge. Together with Sheriff Ed Gonzalez and Judge Darrell Jordan, who were elected in 2016, the new County officials were determined to resolve the lawsuit and create a misdemeanor bail system that is not only constitutional but will also be transparent, promote public accountability, and protect against a reversion to the prior “sentence first, conviction after” system.

III. Brief History of the Litigation

Plaintiffs filed this lawsuit in May 2016 to challenge Defendants’ policy and practice of detaining approximately 40 percent of all misdemeanor arrestees—tens of thousands of people every year—for the duration of their cases solely because they could not pay money bail. Following extensive briefing and argument, Chief Judge Lee H. Rosenthal of the Southern District of Texas conducted an eight-day evidentiary hearing in March 2017 on Plaintiffs’ motion for preliminary injunction and granted that Motion on April 28, 2017. After the district court, the Fifth Circuit, and the United States Supreme Court denied Defendants’ motions to stay the preliminary injunction, the Order went into effect on June 6, 2017. On February 14, 2018, the Fifth Circuit upheld this Court’s factual findings and largely affirmed the Court’s legal rulings.

The district court subsequently issued a revised preliminary injunction, which fourteen of the sixteen judges appealed (the County, the Sheriff, and two of the Judges did not join the appeal). After further proceedings in the district court and the Fifth Circuit, the Fifth Circuit stayed certain provisions of the revised injunction pending appeal, and the revised preliminary injunction, minus the stayed provisions, went into effect in August 2018.

In elections that took place on November 6, 2018, Fifteen of the Sixteen Defendant Judges were defeated, and a new County Judge and a new Commissioner of Precinct 2 were elected. In light of the election, at a hearing on November 13, the district court granted Defendants’ motion to stay the case until February 1, 2019, to allow the parties time to negotiate a settlement. And on January 7, 2019, the new Judges filed a motion in the Fifth Circuit withdrawing their predecessors’ appeal of the revised preliminary injunction.

On January 17, following extensive collaboration among the Parties and consultation with other stakeholders, the County Court at Law Judges amended Local Rule 9.1, eliminating the County’s misdemeanor secured bail schedule. On February 1, the Court reviewed the new local rule and approved its implementation. At that hearing, the Parties reported that settlement negotiations were ongoing and requested additional time to reach an agreement. On February 16, 2019, amended Local Rule 9.1 went into effect.

On July 25, 2019—following months of intensive negotiations among all of the Parties as well as other stakeholders in the County who will be charged with implementing any changes to jurisdiction-wide practices—the Parties reported to the Court that they had reached an agreement in principle. On August 1, 2019, the Parties moved for preliminary approval, which the Court granted on September 5, 2019. Following notice to the Plaintiff Class, the Parties moved for final approval on September 27, 2019, and the Court conducted a final fairness hearing on October 28, 2019. The Court approved the Consent Decree and Settlement Agreement on November 21, 2019.

IV. Scope of Project & Deliverables

The responsibilities and specific duties of the Independent Monitor are set forth in Part XIV, Sections 95–133 of the Consent Decree. The schedule for producing reports to the Court and the public is also set forth in detail in the Consent Decree.

V. Process for Evaluating Proposals and Selecting a Monitor

As set forth in the Consent Decree, representatives of the Plaintiffs, Harris County Sheriff's Office, County Criminal Court at Law Judges, and Harris County will jointly select a Monitor. The process is as follows:

- Proposals are due on January 31, 2020.
- Any proposal must be sent in an email to all of the following:
 - Representative of Plaintiff Class: Elizabeth Rossi, Plaintiffs' counsel, elizabeth@civilrightscorps.org
 - Representatives of Harris County: Melissa Spinks, Assistant County Attorney, Melissa.Spinks@cao.hctx.net; Jim Bethke, Director, Justice Administration Department, jim.bethke@jad.hctx.net
 - Representative of County Criminal Court at Law Judges: Allan VanFleet, Counsel for the 16 County Criminal Court at Law Judges, allanvanfleet@gmail.com
 - Representative of Harris County Sheriff's Office: Major Patrick Dougherty, patrick.dougherty@sheriff.hctx.net
- Interviews will be conducted in Houston within two (2) weeks of the deadline for submitting proposals. If the proposal contemplates employing a team of people to act as the Monitor, any person who will play a significant role in the monitoring process should attend the interview.
- Within two (2) weeks of completing the interviews, the Parties will notify the person or team whom the Parties have selected, and the Parties will file a joint motion asking the Court to appoint the applicant as Monitor, as required by the Consent Decree.
- In the event the Parties cannot agree on a Monitor, they will present competing proposals to the Court, and the Parties will notify each of the applicants who will be presented to the Court that competing proposals are being made, and that the Court will select the Monitor.
- When moving for the Monitor's appointment, the Parties will ask the Court for expedited review of the Joint Motion to appoint the Monitor.

VI. Qualifications

The Parties will give preference to proposals that commit to assembling a team of people who, collectively, are highly qualified in all of the areas listed below. Additionally, the Parties will give significant preference to proposals that identify ways to meaningfully incorporate into the monitoring process the input and perspectives of formerly incarcerated people, people who have otherwise been directly affected by the Harris County criminal legal system, and non-expert community members.

As set forth in the Consent Decree (Section 99), the Monitor must have relevant expertise in some combination of the following:

- Pretrial release and detention practices;
- Monitoring and oversight;
- Preparation of reports or other written materials for diverse audiences;
- Law and civil rights;
- Project management;
- Data analysis and information technology;
- Communication (*i.e.* effective and clear communication and experience communicating with diverse audiences);
- Budgeting;
- Demonstrated ability to collaborate with government entities; and
- Knowledge of the diverse communities affected by the pretrial system.

Additionally, the Monitor should have the following qualifications:

- Ability and willingness to serve the full seven-year term;
- Demonstrated commitment to criminal-legal-system reform;
- Experience with institutional reform of government systems;
- Ability to manage large, inter-agency projects efficiently;
- Familiarity with and understanding of data;
- Ability to evaluate and oversee technical assistance to pretrial systems; and
- A willingness to assemble a team that includes people who are formerly incarcerated or otherwise have been directly impacted by the criminal legal system in Harris County.

VII. Required Proposal Content

Each proposal must include the following sections:

- Executive summary;
- Description of the Monitor or Monitor Team's qualifications and relevant experience;
- Description of the Monitor or Monitor Team's prior relevant experience and references;
- Description of the Monitor or Monitor Team's proposed activities for ensuring implementation and fulfilling the monitoring responsibilities;
- A list of who would be on the Monitor Team (please include a description of your plan for meaningfully incorporating the advice and perspectives of directly impacted and formerly incarcerated people as well as non-expert community members);

- A list of your current time commitments and an explanation of the time you have available to dedicate to the Monitorship, including a statement that you are willing to serve the full seven-year term;
- Expected costs and budget;² and
- A description of any actual or potential conflicts of interest that you or any member of your team have or may have.

² The County has committed to “fund[ing] the Monitor at a reasonable rate,” Section 103, and to “provid[ing] the Monitor with office space and reasonable office support, such as furniture, telephones, computers, internet access, IT support, secure document storage, and document scanning capabilities,” Section 104. The Consent Decree further authorizes the Monitor to “hire, employ, or contract with such additional [persons] or entities as are reasonably necessary to perform tasks assigned to the Monitor by this Consent Decree.” Section 105.